

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

JONATHAN OJEDA,

Plaintiff,

v.

Civil Action No. 2:10cv126

**DR. DAVID PROCTOR,
TRISTAN TENNEY,
WEXFORD MEDICAL SOURCES,
and ADRIAN HOKE,**

Defendants.

ORDER

On May 27, 2011, Magistrate Judge David J. Joel filed his Report and Recommendation ("R&R") (Doc. 35), wherein the plaintiff was directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within fourteen (14) days after being served with a copy of the R&R. Plaintiff filed his objections on June 13, 2011 (Doc. 37).

Upon examination of the report from the Magistrate Judge, it appears to this Court that the issues raised by the plaintiff in his civil rights complaint, wherein plaintiff alleges that defendants have denied him adequate and appropriate medical care, were thoroughly considered by Magistrate Judge Joel in his R&R. Upon review of the plaintiff's objections, which appear to make a blanket objection to the R&R, this Court finds that the plaintiff has not raised any issues that were not already thoroughly considered and addressed by the Magistrate Judge in his R&R. This Court finds, as more fully set forth in the R&R, that defendants were not deliberately indifferent to plaintiff's medical needs. "Disagreements between an inmate and a physician over the inmate's proper medical care do not state a

§ 1983 claim unless exceptional circumstances are alleged.” **Wright v. Collins**, 766 F.2d 841 (4th Cir. 1985), citing **Gittlemacker v. Prasse**, 428 F.2d 1, 6 (3rd Cir. 1970). Plaintiff’s objections are **OVERRULED**.

This Court, upon an independent *de novo* consideration of all matters now before it, is of the opinion that the R&R accurately reflects the law applicable in this case. Therefore, it is

ORDERED that Magistrate Judge Joel’s R&R (Doc. 35) be, and the same hereby is, **ADOPTED**. Accordingly, it is

ORDERED that defendants’ Motion to Dismiss (Doc. 28) shall be, and the same hereby is, **GRANTED**. It is further

ORDERED that the plaintiff’s Complaint (Doc. 1) be, and the same hereby is, **DISMISSED WITH PREJUDICE**, and that this civil action be **STRICKEN** from the docket of the Court. It is further

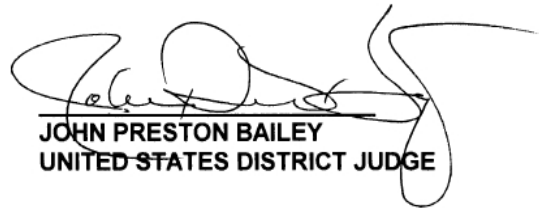
ORDERED that the Clerk shall enter judgment for the defendants. It is further

ORDERED that, if plaintiff should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, plaintiff may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court of Appeals for the Fourth Circuit.

The Clerk of the Court is directed to transmit a copy of this Order to all parties

appearing herein.

DATED: June 16, 2011.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE